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OFFICE OF PETITIONS

In re Application of :
Wang, et al. :
Filed: September 25, 2003 : ON PETITION
Application No. 10/669,263 :
Atty. Dkt. No.: 12859B-DIV :

This decision is in response to the "PETITION TO THE COMMISSIONER," filed December 29, 2003, to accord the above-identified application a filing date of September 25, 2003.

The application was submitted September 25, 2003. The Notice of Incomplete Nonprovisional Application ("Notice") mailed December 17, 2003 by the Office of Initial Patent Examination indicated that the application had not been accorded a filing date because the application was deposited without drawings as per 35 USC 113 (first sentence).

The Notice indicated the filing date would be the date of submission of the omitted drawings. Any assertion that the drawings were submitted or are not necessary for a filing date must be by way of petition.

Petitioner has submitted the omitted drawings and argues that the drawings were inadvertently omitted from the application filing. Petitioner further argues that the instant application is a divisional of parent application No. 09/788,330 (now U.S. Pat. No. 6,652,830). Petitioner further argues that the omitted drawings were incorporated by reference into the instant divisional application.

An incorporation by reference statement may be relied upon to permit the entering of a portion of the prior application into the continuation or divisional application when the portion of the prior application has been inadvertently omitted from the submitted application papers in the continuation or divisional application. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject

matter in such prior application(s), without the need for a petition provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference. See, MPEP 201.06(c).

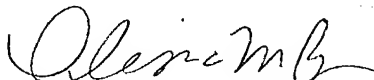
Accordingly, in view of the incorporation by reference of the prior application, the drawings are not new matter if these pages were part of the disclosure of the prior application.

Petitioner is advised to promptly submit a second preliminary amendment requesting entry of the omitted figures prior to the issuance of the first Office action on the merits.

In view of the above, the petition to accord the instant application a filing date of September 25, 2003 is GRANTED.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 25, 2003.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.



Alesia M. Brown
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